

Worku v Mukasey 04-71230

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BEA, Circuit Judge, dissenting:CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Because the IJ's decision—read as a whole—demonstrates he considered all relevant factors before making his discretionary decision to deny Worku's asylum claim, I respectfully dissent. The majority states the "IJ did not give any consideration whatsoever to other relevant factors such as Worku's past persecution."¹ Not so. The IJ discussed Worku's past persecution at length in his opinion, concluding Worku had credibly established both that she had been the subject of past persecution, and she had a well-founded fear of future persecution. Based on this conclusion, the IJ found Worku statutorily eligible for asylum. The IJ further found Worku eligible for withholding of removal, because it appeared "rather clear, in fact, overwhelming from reading the State Department report, that an OLF member, once detected, would be incarcerated and mistreated." Thus, the IJ not only considered Worku's testimony regarding her past persecution, but he also gave it sufficient weight to merit a determination she was statutory eligible for asylum and withholding of removal.

Despite this evidence of past and likely future persecution, however, the IJ

¹ Other than past persecution, Worku cites no additional factors the IJ should have considered in making his discretionary decision to deny asylum.

denied Worku’s asylum claim as a matter of discretion due to her membership in the OLF—an organization that, according to the State Department Country Report, has killed innocent civilians through its use of land mines.² Although Worku’s membership in this organization did not render her statutorily ineligible for asylum, the IJ properly considered Worku’s involvement in the OLF as a relevant factor in his discretionary asylum determination. *See Kalubi*, 364 F.3d at 1139.

Notwithstanding the IJ’s extensive discussion of Worku’s past persecution, the majority appears to fault the IJ for not explicitly incorporating this discussion into the portion of his opinion in which he denied Worku’s asylum claim as a matter of discretion. Under this court’s precedent, the IJ is not required to incorporate previous portions of his opinion into later portions of the same opinion, as if he were a plaintiff preparing a complaint containing multiple causes of action (*e.g.*, “I hereby incorporate the discussion of past persecution contained in paragraphs 14–23 of this oral opinion into the next section of the opinion.”). Instead, the IJ’s decision must demonstrate he has “heard, considered, and decided” the petitioner’s asylum claim based on all relevant factors. *See Kalubi v. Ashcroft*, 364 F.3d 1134, 1140–41 (quoting *Rodriguez-Matamoros v. INS*, 86 F.3d

² Which, I suppose, is one way it “defends the rights of and works to establish an independent nation for the Oromo people.” Maj. at 2.

158, 160 (9th Cir. 1996)). Here, the IJ's decision satisfies this requirement. Thus, I would deny Worku's petition.